

## Senate, No. 2406, printed as amended

[Senate, April 29, 2010 – Text of the Senate Bill relative to the estate of homestead, being the text of S2401, printed as amended.]



### The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

## AN ACT RELATIVE TO THE ESTATE OF HOMESTEAD

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** Section 3A of chapter 60 of the General Laws, as appearing in the 2008 Official Edition,

is hereby amended by adding the following paragraph:-

Every bill or notice provided pursuant to this section shall include a notice of the right to declare homestead protection pursuant to chapter 188 of the General Laws. The notice shall include, but not be limited to, a summary of the differences between the automatic homestead protection and the enhanced benefits acquired by making a declaration of homestead pursuant to said chapter 188.

**SECTION 2.** The General Laws are hereby amended by striking out chapter 188 and inserting in place thereof the following chapter:-

CHAPTER 188

HOMESTEADS

11 Section 1. (a) For the purposes of this chapter, the following words shall have the  
12 following meanings unless the context clearly requires otherwise:

13 “Automatic homestead exemption”, \$125,000, provided, however, that: (1) with respect to a  
14 home owned as joint tenants or as tenants by the entirety, the maximum automatic homestead  
15 exemption shall remain whole and unallocated between the owners, provided that the owners together  
16 shall not be entitled to an automatic homestead exemption in excess of \$125,000; and (2) with respect  
17 to a home owned by multiple owners as tenants in common or as trust beneficiaries, the maximum  
18 automatic homestead exemption shall be allocated among all owners in proportion to their respective  
19 ownership interests.

20 “Declared homestead exemption”, \$500,000; provided, however, that: (1) with respect to  
21 a home owned by joint tenants or tenants by the entirety who are benefited by an estate of  
22 homestead declared pursuant to section 1B, the declared homestead exemption shall remain  
23 whole and unallocated, provided that the owners together shall not be entitled to a declared  
24 homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or  
25 trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary  
26 who benefits by an estate of homestead declared pursuant to said section 1B shall be the  
27 product of: (i) \$500,000; and (ii) the co-tenant’s or trust beneficiary’s percentage ownership  
28 interest; (3) except as provided in clause (4), each person who owns a home and who is  
29 benefited by an estate of homestead declared pursuant to section 1A shall be entitled to the  
30 declared homestead exemption without reduction, proration or allocation among other owners  
31 of the home; and (4) separate estates of homestead may be declared pursuant to sections 1A  
32 and 1B on the same home, and in such event: (i) if the home is owned by tenants in common  
33 or trust beneficiaries, the declared homestead exemption for each co-tenant and trust  
34 beneficiary who benefits by an estate of homestead declared pursuant to section 1B shall be

**Comment [WW1]:** Creem-Candaras amendment  
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35 calculated in the manner provided in clause (2), and the declared homestead exemption for  
36 each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant  
37 to section 1A shall be calculated in the manner provided in clause (3); or (ii) if the home is  
38 owned by joint tenants or tenants by the entirety, the declared homestead exemption for the  
39 owners together shall be the sum of \$500,000 multiplied by the number of declarations  
40 recorded pursuant to section 1A, plus \$250,000; provided, however, that the homestead  
41 exemption under this subclause shall remain whole and unallocated among the owners; and  
42 provided further, that no owner who declares a homestead, acting individually, shall be entitled  
43 to claim an exemption of more than \$500,000; and (5) the calculation of the amount of  
44 homestead exemption available to an owner shall not sever a joint tenancy or tenancy by the  
45 entirety.

**Comment [WW2]:** Panagiotakos amendment 1

**Comment [WW3]:** Panagiotakos amendment 1

46 “Disabled person”, an individual who has a medically-determinable, permanent physical  
47 or mental impairment that would meet the disability requirements for Supplemental Security  
48 Income under 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time  
49 of recording.

50 “Elderly person”, an individual 62 years of age or older.

51 “Family” and “Family members”, (1) married individuals, both of whom own a home,  
52 and any minor child; (2) a married individual who owns a home, a non-titled spouse of the  
53 married individual and any minor child; or (3) an unmarried individual who owns a home and  
54 any minor child.

**Comment [WW4]:** Panagiotakos amendment 1

**Comment [WW5]:** Panagiotakos amendment 1

55 “Home”, the aggregate of: (1) any of the following: (i) a single-family dwelling,  
56 including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to  
57 4-family dwelling, including accessory structures appurtenant thereto and the land on which it

58 is located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a  
59 condominium, as those terms are defined in section 1 of chapter 183A, that is used for  
60 residential purposes; or (v) a residential cooperative housing unit established pursuant to  
61 chapters 156B, 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of  
62 section 8; and (3) the proceeds of any policy of insurance insuring the home against fire or  
63 other casualty loss as provided in clause (2) of subsection (a) of said section 8.

64 “Minor child”, a person aged 21 and under, who is the natural or adopted child of an  
65 owner or owner’s spouse entitled to the benefits of this statute, notwithstanding any provision  
66 of law to the contrary.

67 “Mortgage”, an instrument granting a security interest in a manufactured home or  
68 cooperative housing unit.

69 Mortgagee, the secured party in a mortgage instrument.

70 “Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant  
71 in common, life estate holder or holder of a beneficial interest in a trust.

72 “Principal residence”, the home where an owner, and the owner’s family if applicable,  
73 resides or intends to reside as the primary dwelling; provided, however, that no person shall  
74 hold concurrent rights in more than 1 principal residence.

75 “Record”, “recording” or “recorded”, the act of recording in the registry of deeds or the  
76 registry district of the land court for the county or district wherein the home lies, except that  
77 with respect to a manufactured home located on registered land, recording in the registry of  
78 deeds shall be sufficient.

79 Section 1A. (a) The estate of homestead of each owner who is an elderly or disabled  
80 person, regardless of marital status, shall be protected under this section against attachment,

81 seizure, execution on judgment and levy, except as provided in subsection (b) of section 1B, to  
82 the extent of the declared homestead exemption provided that the declaration of homestead for  
83 such elderly or disabled person that complies with section 2 has been recorded and provided  
84 that each owner occupies or intends to occupy the home as his principal residence.

**Comment [WW6]:** Panagiotakos amendment 1

85 An owner of a home who qualifies under this section shall, upon recording of an elderly or  
86 disabled person's declaration of homestead protection, be eligible for protection of such  
87 ownership interest to the extent of the declared homestead exemption as set forth in clauses (3)  
88 and (4) of the definition of "declared homestead exemption" in section 1 regardless of whether  
89 such declaration is recorded individually or jointly with another.

**Comment [WW7]:** Panagiotakos amendment 1

90 (b) Except as provided in the following paragraph, each elderly or disabled person's  
91 estate of homestead shall terminate upon: (i) the sale or transfer of that person's ownership  
92 interest in the home, except where the elderly or disabled person is also the transferee of all or  
93 a portion of the transferred interest; (ii) the recorded release of that person's homestead estate;  
94 (iii) the subsequent declaration of an estate of homestead on other property; (iv) the  
95 abandonment of the home as the principal residence by the person; (v) upon the death of the  
96 person; or (vi) with respect to a home owned in trust, the execution of a deed or recorded  
97 release by the trustees.

98 In the event that an owner records a declaration under this section and then conveys to or  
99 is survived by a spouse who does not have the benefit of an estate of homestead created under  
100 this section or section 1B and the spouse occupies or intends to occupy the home as the  
101 principal residence, then the spouse shall be deemed, as of the time such spouse acquired title,  
102 to have the benefit of the declaration previously recorded to the same extent as if such

103 declaration had been recorded under section 1B, until the spouse becomes eligible for and  
104 records a declaration of homestead pursuant to this section.

105 (c) No declaration of homestead created under section 1A shall terminate the existing  
106 homestead rights of a non-titled spouse or any minor children.

107 (d) Nothing in this section shall prohibit an elderly or disabled person from declaring or  
108 continuing a homestead pursuant to section 1B, but no person shall concurrently hold rights  
109 under both this section and section 1B.

110 Section 1B (a) An estate of homestead to the extent of the declared homestead exemption  
111 in a home may be acquired by 1 or more owners who occupy or intend to occupy the home as a  
112 principal residence. The estate of homestead shall be created by a written declaration prepared,  
113 executed and recorded in accordance with section 2. A homestead declaration shall benefit  
114 each declarant and each declarant's family members who occupy or intend to occupy the home as  
115 their principal residence. The homestead rights of non-titled family members shall consist of  
116 the right to use, occupy and enjoy the home as their principal residence.

117 (b) An estate of homestead shall be exempt from the laws of conveyance, descent,  
118 devise, attachment, seizure, execution on judgment, levy and sale for payment of debts or  
119 legacies except as follows:

- 120 (1) for a sale for federal, state and local taxes, assessments, claims and liens;  
121 (2) for a lien on the home recorded prior to the creation of the estate of homestead;  
122 (3) for a mortgage on the home as provided in sections 5 and 6;  
123 (4) upon an order by a court that a spouse, former spouse or parent shall pay a  
124 certain amount weekly or otherwise for the support of a spouse, former spouse or minor  
125 children;

**Comment [WW8]:** Panagiotakos amendment 1

**Comment [WW9]:** Panagiotakos amendment 1

**Comment [WW10]:** Panagiotakos Amendment 1

**Comment [WW11]:** Panagiotakos amendment 1

126 (5) where buildings on land not owned by the owner of the estate of homestead are  
127 attached, levied upon or sold for the ground rent of the lot upon which they are situated;  
128 and

129 (6) upon an execution issued from a court of competent jurisdiction to enforce its  
130 judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

**Comment [WW12]:** Creem-Candaras  
amendment 2

131 Section 1C. In the absence of a valid declaration of homestead recorded under this chapter, an  
132 estate of homestead to the extent of the automatic homestead exemption shall exist in a home for the  
133 benefit of the owner and the owner's family members who occupy or intend to occupy the home as a  
134 principal residence. The homestead rights of non-titled family members shall consist of the right to use,  
135 occupy and enjoy the home as a principal residence. The estate shall be held subject to this chapter,  
136 except for section 1A, 1B and 2.

137 In the event that spouses occupy or intend to occupy separate homes, then both estates of  
138 homestead together shall not exceed the automatic homestead exemption. The recording of a declaration  
139 of homestead under this chapter shall supersede the automatic homestead exemption provided by this  
140 section, but shall not terminate the automatic homestead exemption applicable to the period between the  
141 creation of the automatic homestead and the later recording of a declaration of homestead. If a  
142 superseding declaration of homestead on the same home is later invalidated or terminated, the estate of  
143 homestead provided in this section shall be reinstated as of the date of its original creation.

144 Section 2. (a) A declaration of homestead shall be in writing, signed and acknowledged  
145 under penalty of perjury by each owner to be benefited by the homestead, except as provided in  
146 clause (4), shall be recorded and shall comply with the following:

147 (1) each owner to be benefited by the homestead, and the owner's non-titled spouse,  
148 if any, shall be identified;

(2) the declaration shall state that each person named therein occupies or intends to occupy the home as their principal residence.

(3) if the home is co-owned by a married couple, whether in their names only or as co-tenants with others, and the home is the principal residence or is intended to be the principal residence of both spouses, a declaration under section 1B shall be executed by both spouses; and

(4) if the home is owned in trust, only the trustee shall execute the declaration.

(b) A declaration of homestead under section 1A shall, in addition to the requirements of subsection (a), include the following:

(1) a statement that the owner to be benefited is an elderly person or a disabled person; and

(2) with respect to a declaration of homestead benefiting a disabled person: (i) an original or certified copy of a disability award letter issued to the person by the United States Social Security Administration; or (ii) a letter signed by a physician registered with the board of registration in medicine certifying that the person meets the disability requirements stated in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording; provided, however, that the award letter or physician's letter shall be recorded with the declaration.

(c) A declaration of homestead shall not be created within a deed or other instrument vesting title in the owner.

(d) The statement of principal residence required in clause (2) of subsection (a) shall be binding upon an identified owner, including an owner who is a beneficiary of a trust, but may be overcome by an interested third party upon presentation of clear and convincing evidence to



172 the contrary. In the event that spouses occupy or intend to occupy separate homes and valid  
173 declarations are recorded with respect to each, then both estates of homestead together shall not  
174 exceed the declared homestead exemption.

175 The estate of homestead of an individual who records a declaration of homestead under  
176 section 1B and who subsequently marries shall automatically be deemed to benefit that  
177 individual's spouse. Any subsequent recording of a declaration of homestead benefiting: (i) a  
178 family member identified on a prior declaration on the same home; or (ii) the spouse of that  
179 person, without an intervening release, shall relate back to the filing date of the earliest  
180 recorded declaration, but the provisions of this chapter pursuant to which the later recorded  
181 declaration was made shall control the rights of a person identified in the later declaration.

182 Section 3. In a case where a complaint for divorce, separate support, guardianship or  
183 conservatorship has been filed in the probate court by or against a person entitled to the benefit  
184 of an estate of homestead, the spouse and minor children of that person may use, occupy and  
185 enjoy the homestead estate until ordered otherwise by the probate court. The recording of an  
186 order of the probate court, together with the description of the homestead estate, shall prevent a  
187 beneficiary of the homestead estate from disposing of the estate until such time as the probate  
188 court revokes the judgment.

189 Section 4. The estate of homestead existing at the death or divorce of a person holding a  
190 homestead under section 1B or 1C shall continue for the benefit of the surviving spouse or the  
191 former spouse and minor children who occupy or intend to occupy the home as their principal  
192 residence. The estate of homestead of the surviving spouse or former spouse and minor  
193 children shall continue notwithstanding the remarriage of the surviving or former spouse. The  
194 right, title and interest of the deceased in the home, except the estate of homestead thus

**Comment [WW13]:** Creem-Candaras  
amendment 2

195 continued, shall be subject to the laws relating to devise, descent and sale for the payment of  
196 debts and legacies.

197 Section 5. No estate of homestead shall affect a mortgage, lien or other encumbrance  
198 previously existing, except as provided in this chapter.

199 Section 6. An estate of homestead shall be subordinate to a mortgage encumbering the  
200 home executed by all the owners of the home. The subordination shall not require the  
201 signature of a spouse who is not an owner. A mortgage executed by fewer than all of the  
202 owners of a home that is subject to an estate of homestead shall be superior only to the  
203 homestead estate of the owners who are parties to the mortgage and their non-titled spouses  
204 and minor children, if any.

205 No statement that a homestead estate shall be subordinate to the mortgage shall be  
206 required in the mortgage instrument and nothing contained in a mortgage or any document  
207 executed in connection with the mortgage shall affect or be construed to create, modify or  
208 terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid.  
209 A mortgage lender shall not require or record a release of homestead in connection with the  
210 making and recording of a mortgage.

211 Section 7. (a) An estate of homestead created under section 1B or 1C may be terminated  
212 by any of the following methods:

213 (1) a deed to a non-family member conveying the home, signed by the owner and a  
214 non-owner spouse or former spouse residing in the home as a principal residence as of  
215 the date of the deed;

216 (2) a recorded release of the estate of homestead, duly signed and acknowledged by  
217 the owner and a non-owner spouse or former spouse residing in the home as a principal  
218 residence as of the date of the release;

219 (3) the abandonment of the home as the principal residence by the owner, the  
220 owner's spouse, former spouse or minor children, except that such abandonment shall  
221 terminate only the rights of the persons who have abandoned the home; provided,  
222 however, that no person in military service as defined in 50 U.S.C. appendix, section  
223 511 shall be deemed to have abandoned the home due to such military service; |

**Comment [WW14]:** Panagiotakos amendmnt

224 (4) in the case of a home the title to which is held in trust, by either: (i) the  
225 execution of a deed or a release of homestead by the trustee; or (ii) action of a beneficial  
226 owner identified in the declaration, who is not a minor child, taken in the same manner  
227 as provided in clauses (2) and (3); or |

**Comment [WW15]:** Panagiotakos amendment  
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228 (5) the subsequent recorded declaration of an estate of homestead under section 1B on other  
229 property, except that such declaration shall terminate only the rights of the owner making such  
230 subsequent declaration and the rights of that owner's spouse and minor children who reside or  
231 intend to reside in the other property as their principal residence.

232 (b) No deed between spouses or former spouses or co-owners who individually or jointly  
233 hold an estate of homestead under section 1B or 1C and no deed between a trustee and a trust  
234 beneficiary or between a life tenant and a remainderman shall terminate the homestead unless  
235 each co-owner, spouse, former spouse or trust beneficiary entitled to the benefit of the  
236 homestead has executed an express release thereof pursuant to clause (2) or clause (4) of |  
237 subsection (a).

**Comment [WW16]:** Creem-Candaras  
Amendmnt 2

**Comment [WW17]:** Panagiotakos amendment  
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**Comment [WW18]:** Panagiotakos amendment  
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238 (c) If a subsequent declaration on other property which terminates a homestead under clause (5)  
239 is later invalidated, the prior declaration shall not be reinstated. Except for the subordination  
240 provided in section 6, nothing contained in a mortgage or any document executed in  
241 connection therewith shall terminate or otherwise affect a homestead estate.

**Comment [WW19]:** Panagiotakos amendment  
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242 (d) A deed reserving an estate of homestead shall convey, according to its terms, any  
243 title or interest in the property beyond the estate of homestead.

244 Section 8. (a) If a home that is subject to an estate of homestead is sold, whether  
245 voluntarily or involuntarily, taken or damaged by fire or other casualty, then the proceeds  
246 received on account of any such sale, taking or damage shall be entitled to the protection of this  
247 chapter during the following periods:

248 (1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period  
249 ending on the date on which the person benefited by the homestead either acquires  
250 another home the person intends to occupy as a principal residence or 1 year after the  
251 date on which the sale or taking occurred, whichever first occurs; and

252 (2) in the event of a fire or other casualty, for a period ending on: (i) the date upon  
253 which the reconstruction or repair to the home is completed or the date on which the  
254 person benefited by the homestead acquires another home the person intends to occupy as  
255 a principal residence; or (ii) 2 years after the date of the fire or other casualty, whichever  
256 first occurs.

**Comment [WW20]:** Panagiotakos amendment  
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257 (b) For the purposes of this section, occupancy of a trailer, manufactured home or other  
258 temporary housing shall not establish principal residency in a reconstructed or replacement  
259 home.

260           Section 9. If the property of a debtor is assigned under the laws relative to insolvent  
261 debtors and debtor claims and it appears to the court wherein the insolvency proceedings are  
262 pending that the debtor is entitled to hold a part thereof as a homestead and that the property in  
263 which estate of homestead exists is of greater value than either the automatic homestead exemption  
264 or the declared homestead exemption, as applicable, the court shall cause the property to be  
265 appraised by 3 disinterested appraisers, 1 of whom shall be appointed by the insolvent debtor, 1  
266 of whom shall be appointed by the assignee and 1 of whom shall be appointed by the court;  
267 provided, however, that if either the assignee or insolvent debtor fails to make such  
268 appointment, the court shall appoint an appraiser for the assignee or the insolvent debtor. The  
269 appraisers shall be sworn faithfully and impartially to appraise the property and shall appraise  
270 and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in  
271 section 18 of chapter 236 for a judgment debtor and the residue shall vest in and be disposed of  
272 by the assignee in the same manner as property which is not exempt by law from levy on  
273 execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in  
274 insolvency, as are allowed to appraisers of land seized upon execution.

**Comment [WW21]:** Creem-Candaras  
amendment 2

275           Section 10. A deed, release or mortgage containing a statement of the marital status of a grantor  
276 may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith reliance on  
277 such deed, release or mortgage, an affidavit executed and acknowledged by the grantor, releaser or  
278 mortgagor under penalty of perjury stating that, at the time of delivery of the deed, release or mortgage,  
279 the affiant had no spouse then entitled to claim the benefit of an existing estate of homestead, shall be  
280 conclusive proof of the nonexistence of such benefit at that time. The affidavit may be recorded in  
281 connection with the execution and delivery of a deed, release or mortgage and shall be accepted in the  
282 appropriate registry of deeds and registry district of the land court. The subsequent residency or

**Comment [WW22]:** Panagiotakos amendment  
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283 renewal of residency in the home by a spouse of the grantor, releaser or mortgagor shall not defeat the  
284 priority of a mortgage, release or conveyance accepted in reliance on such affidavit.

285 Section 11. In all mortgage transactions, the closing attorney or settlement agent shall provide  
286 the mortgagor with notice of the right to declare homestead protection pursuant to chapter 188 of the  
287 General Laws, receipt of which shall be acknowledge in writing by the mortgagor. The notice shall  
288 include, but not be limited to, a summary of the differences between the automatic homestead protection  
289 and the enhanced benefits acquired by making a declaration of homestead.

**Comment [WW23]:** Creem-Candaras  
amendment 2

290 **SECTION 3.** Chapter 236 of the General Laws is hereby amended by striking out  
291 section 18, as appearing in the 2008 Official Edition, and inserting in place thereof the  
292 following section:-

293 Section 18. If a judgment creditor requires an execution to be levied on property which  
294 is claimed by the debtor to be as a homestead exempt from such levy and if the officer holding  
295 such execution is of the opinion that the premises are of greater value than an amount equal to  
296 either the automatic homestead exemption or the declared homestead exemption, as applicable, as  
297 defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the  
298 manner provided by section 6. If in the judgment of the appraisers the premises are of greater  
299 value than the amount of the declared homestead exemption, the appraisers shall set off to the  
300 judgment debtor so much of the premises, including the dwelling house, in whole or in part, as  
301 shall appear to them to be of the value of the amount of the declared homestead exemption and  
302 the residue of the property shall be levied upon and disposed of in like manner as land not  
303 exempt from levy on execution; provided, however, that if the property levied on is subject to a  
304 mortgage, it may be set off or sold subject to the mortgage and to the estate of homestead in the  
305 same manner as land subject to a mortgage only.

**Comment [WW24]:** Creem-Candaras  
amendment 2

306 **SECTION 4.** All existing estates of homestead in effect on the effective date of this act shall

**Comment [WW25]:** Panagiotakos amendment  
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307 continue in full force and effect notwithstanding the repeal of any law under which they were created  
308 and shall be governed by this act, notwithstanding their failure to comply with the execution  
309 requirements of section 2 of chapter 188 of the General Laws, as appearing in section 2 of this act.